

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JOHN JINK LYNCH,

Petitioner

v.

Civil Action No.: 2:07-0048

THOMAS MCBRIDE, Warden,
Mount Olive Correctional Complex,

Respondent

MEMORANDUM OPINION AND ORDER

Pending is petitioner's motion requesting a certificate of appealability, filed March 18, 2008.

On February 22, 2008, the court entered its Judgment denying the petitioner's petition filed pursuant to 28 U.S.C. § 2254. The Judgment is not appealable unless a circuit justice or district court judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A movant satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v.

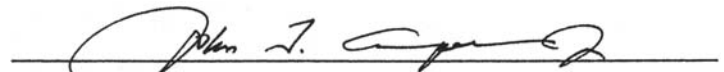
McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001).

As explained in the February 22, 2008, memorandum opinion and order, the petition was untimely based upon Crawley v. Catoe, 257 F.3d 395 (4th Cir. 2001). Petitioner has not demonstrated that reasonable jurists would find that conclusion either debatable or in error in this circuit.

Based upon the foregoing, it is ORDERED that petitioner's motion requesting a certificate of appealability be, and it hereby is, denied.

The Clerk is directed to forward copies of this memorandum opinion and order to the petitioner and all counsel of record.

DATED: July 14, 2008


John T. Copenhaver, Jr.
United States District Judge